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Counsel to Receiver Sherwood Partners, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

—V.

JOHN B. BIVONA; SADDLE RIVER
ADVISERS, LLC; SRA MANAGEMENT
ASSOCIATES, LLC; FRANK GREGORY
MAZZOLA

Defendants.

Case No. 3:16-cv-1386

**RECEIVER'S
APPLICATION PURSUANT
TO L.R. 7-11 FOR THE
APPROVAL OF FEES AND
EXPENSES OF LOCAL
COUNSEL RETAINED BY
THE RECEIVER FOR THE
PERIOD NOVEMBER 2017
TO OCTOBER 2018**

Date: December 13, 2018

Time: 1:30 PM

Courtroom: 5

Judge: Edward M. Chen

MOTION FOR PAYMENT OF LOCAL COUNSEL'S FEES

I. Background

On October 11, 2016, this Honorable Court issued an Order of Appointment of Receiver ("the Order") and thereby appointed Sherwood Partners, Inc. ("Sherwood") as Receiver in this matter. The Order, at Sec. II F, permitted Sherwood to retain professionals, including attorneys, to assist it in performing its duties. Docket No. 142.

1 On October 26, 2016 the Court issued a further order, Docket No.
2 147, permitting Sherwood to retain local counsel in the states of New
3 York, New Jersey and Delaware pursuant to 18 U.S.C. §754, in order to
4 protect the assets of the Receivership in any local disputes over
5 ownership and/or possession of Receivership Estate assets, and if
6 necessary, to defend the Receiver in any local actions filed in those
7 jurisdictions, or bring suit in aid of the Receiver's pursuit of its duties
8 under the Order. On November 3, 2016 the Court issued a further order,
9 Docket No. 153, permitting Sherwood to retain bankruptcy counsel to
10 represent it in the Chapter 7 proceeding filed by Defendant Bivona in
11 the U.S. Bankruptcy Court for the Southern District of New York.

12 By this Application, Sherwood, through its Senior Vice President
13 Georgiana Nertea ("Nertea"), requests that this Court approve the fees
14 and expenses of its local (New York state) and federal bankruptcy
15 counsel for the period of November 2017 to October 2018. This
16 Application consists of the Declaration of Georgiana Nertea, and the
17 time and expense records of the firm of Archer&Greiner PC ("the Archer
18 Firm",Exhibit A to the Declaration of Nertea).¹

19 **II. The Fee Application of Sherwood's (Local) Bankruptcy
20 Counsel**

21
22 ¹ In Docket No. 153, the court approved the retention of attorneys at the
23 firm of DiConza, Traurig and Kadish in October 2016. Subsequently, in
24 February of this year, the DiConza firm was merged with the firm of
25 Archer & Greiner, PC. Therefore the bills being presented here are on
26 the letterhead of the Archer & Greiner firm, but reflect work performed
27 by the DiConza firm from October 2017 to February 2018, and the
Archer firm for months subsequent to February 2018 up to and
including October 2018.

1 As the Declaration of Nertea sets forth, the period for which
2 Sherwood makes this Application is November 2017 to October 2018.
3 The Receiver elected to present these bills after the passage of twelve
4 months to avoid multiple and piecemeal applications to the Court, which
5 would each cost the billed time of the Receiver's counsel to file separate
6 motions for each quarter. As is apparent from the monthly bills, and
7 their total, the amounts for each of the twelve months were quite small,
8 and it was difficult to estimate what future months would incur.
9 Therefore the Receiver waited until the total of the work for overseeing
10 the bankruptcy matter of John Bivona and for legal work as local
11 counsel for the Receiver approached \$10,000 in total.

12 Ms. Nertea has reviewed the Archer firm's twelve months
13 invoices, and has found them in all respects to be reasonable and
14 necessary. Nertea Decl. at § 3. Ms. Nertea has also reviewed all the time
15 spent by the Archer firm's personnel on enumerated receivership tasks
16 and has attested to the accuracy and appropriateness of the time billed
17 in relation to the tasks assigned by the Receiver. Nertea Decl., at ¶ 3. In
18 sum, Sherwood believes all the attached bills to be consistent with the
19 SEC's "Billing Guidelines for Receivers" and to have been done within
20 the assigned scope of work given to them by the Receiver. Nertea Decl.,
21 at ¶ 3.

22 **III. The SEC and Other Counsel Have Reviewed the Archer
23 Firm's Fees**

24 The Receiver submitted the accompanying Archer firm's billing
25 invoices to the SEC, and the counsel for the other participating parties
26 for their review. The SEC and counsel for the other parties have
27

1 indicated to the Receiver that they do not oppose the fee request of
2 Archer & Greiner PC as presented to the Court on shortened notice.

3 **IV. Conclusion**

4 For the forgoing reasons, the Receiver requests that the Court
5 approve the first-year billings of the Archer firm set forth above.

6
7 Dated: November 28, 2018

GARTENBERG GELFAND HAYTON
8 LLP

9 By: /s/ John W. Cotton

10 John W. Cotton
11 Counsel to the Receiver